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Supreme Court of the United States

OCTOBER TERM, 1952

No. 237

L. J. WILLIAMS, d/b/a L. J. WILLIAMS LUMBER COMPANY AND ADA W. WILLIAMS, d/b/a VARNVILLE WOOD PRODUCTS COMPANY, PETITIONERS,

versus

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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Petitioners pray that a writ of certiorari issue to review the decision and order of the United States Court of Appeals for the Fourth Circuit, entered in this case on April 1, 1952.

OPINIONS BELOW

The decision and order of the National Labor Relations Board (R. 8) is reported in 93 N. L. R. B. No. 271. The supplemental decision and order of the National Labor Relations Board (R. 1) is reported in 96 N. L. R. B. No.

82. The opinion of the Court of Appeals (R. 156) is reported in 195 Fed. (2d) 669.

JURISDICTION

The decision of the Court of Appeals was filed on April 1, 1952. Petition for a rehearing was denied on or about May 5, 1952. The jurisdiction of this Court is invoked under the provisions of 28 U. S. C., Section 1254.

QUESTIONS PRESENTED

1. Whether petitioners violated Section 8 (a) (5) and (1) of the Labor Management Relations Act of 1947 by refusing to bargain with the Union certified by the National Labor Relations Board.

2. Whether petitioners interfered with, restrained and coerced their employees in violation of Section 8 (a) (1) of the Labor Management Relations Act of 1947.

3. Whether petitioners discriminated against their employees, Miller, Henderson and Hill in violation of Section 8 (a) (3) of the Labor Management Relations Act of 1947.

4. Whether the Board's finding that petitioners interfered with, restrained and coerced their employees in violation of Section 8 (a) (1) of the Act deprives them of their rights under the First Amendment.

5. Whether the Order of the Board, enforced by the decision of the Court below, requiring petitioners to offer Miller reinstatement with back pay, to make Hill whole for loss of earnings, and to make Henderson and his riders whole for any losses suffered by them, deprives them of their rights under the Fifth Amendment.

STATUTES INVOLVED

The pertinent statute involved is the Labor Management Relations Act of 1947, Sections 8 (a) (1) (3) (5), which is printed in the Appendix, *infra*, pp. 11, 12.

STATEMENT

On July 20, 1949, Plywood and Veneer Workers Local Unions No. 3130 and 3135, United Brotherhood of Carpenters and Joiners of America, A. F. L., filed a Petition with the National Labor Relations Board asking for certification as the exclusive bargaining representative of the employees of both petitioners. Petitioners opposed the Union's claim that a grouping of the employees of the two companies in a single bargaining unit was appropriate and urged that the employees of the two companies should be regarded as separate bargaining units. Thereafter a representation hearing was held and testimony was taken as to the operation of the petitioners' businesses. The Board held that the employees of both petitioners could be grouped into a single unit and directed an election. The employees by a majority vote designated the Union as their bargaining representative and the same was thereupon duly certified by the Board.

Following the certification, petitioners thereafter refused to bargain with the Union, urging that the Board's unit determination was improper and that the grouping of the employees of both companies in a single unit was inappropriate. The Union thereupon filed unfair labor practice charges with the Board alleging, *inter alia*, a wrongful refusal to bargain. At the hearing which followed petitioners renewed their objections to the unit and stated that they desired to obtain a judicial review of the Board's determination of the unit. Subsequently, the Trial Examiner

and the Board found that the petitioners' refusal to bargain with the Union constituted a violation of Section 8 (a) (5) of the Act.

The Board further concluded that the petitioners also violated Sections 8 (a) (1) of the Act and Section 8 (a) (3) of the Act and issued its Order requiring the petitioners to cease and desist from the alleged unfair labor practices found to exist and also to take certain affirmative action as appears in the Order. The Orders of the Board were enforced in their entirety by the decision of the court below.

REASONS FOR GRANTING THE WRIT

1. We respectfully submit that the writ of certiorari should be granted herein in accordance with the provisions of Rule 38 (5) of the Supreme Court Rules for the reasons that the Court of Appeals has rendered a decision in conflict with the decisions of Courts of Appeals of other Circuits and has decided a Federal question in a way probably in conflict with applicable decisions of this Court. It is respectfully submitted that the decision below is clearly erroneous and involves important questions of constitutional law.

The decision of the Court below upholding the findings of the National Labor Relations Board that the petitioners interfered with, restrained and coerced their employees in violation of Section 8 (a) (1) of the Act conflicts with other applicable decisions of this Court on this question, *Thomas v. Collins*, 323 U. S. 516, and is in conflict with the decisions of Courts of Appeals of other Circuits on the same matter, *Sax v. N. L. R. B.*, 171 F. (2d) 769 (C. A| 7), and *N. L. R. B. v. Enid Co-op. Creamery Association*, 169 Fed. (2d) 986 (C. A. 10), and in effect deprives petitioners of the rights guaranteed to them under the First Amendment.

In the case of *Thomas v. Collins, supra,* the Court therein stated:

> "Accordingly, decision here has recognized that employer's attempts to persuade to action with respect to joining or not joining unions are within the First Amendment's guarantee. *N. L. R. B. v. Va. Electric Power Company,* 314 U. S. 469. Decisions of other Courts have done likewise".

It clearly appears from a reading of the record that there is a total lack of evidence that petitioners interfered with, restrained and coerced their employees and the effect of the decision below is to deprive petitioners of their rights under the First Amendment as recognized in *Thomas v. Collins, supra.*

From a reading of the opinion of the Court in the case of *Sax v. N. L. R. B., supra,* it clearly appears that the decision of the Court of Appeals for the Fourth Circuit, is in conflict with the holding of the Court of Appeals for the Seventh Circuit on the same point. In the *Sax case,* the Court had this to say:

> "Mere words of interrogation or prefunctory remarks not threatening or intimidating in themselves made by an employer with no anti-union background and not associated as a part of a pattern or course of conduct hostile to unionism or as part of espionage upon employees cannot, standing naked and alone, support a finding of violation of Section 8 (a) (1)."

Likewise, the decision of the Court of Appeals for the Tenth Circuit in the case of *N. L. R. B. v. Enid Co-op. Creamery Association, supra,* which defines the extent to which an employer may exercise freedom of speech in his relationships with employees, appears to be in conflict with the decision of the Court of Appeals for the Fourth Circuit in the instant case.

2. The decision of the Court below enforcing the Order of the Board with respect to the employees Henderson, Miller and Hill in effect deprives petitioners of their property without due process of law in violation of the Fifth Amendment.

A review of the record indicates beyond question that these employees were not discriminated against and the Order of the Board and the decision below requiring petitioners to reinstate and reimburse these employees clearly denies petitioners' rights under the Fifth Amendment.

3. The decision of the Court below is clearly erroneous and if permitted to stand will deprive petitioners of their constitutional rights and set a dangerous precedent for future application in cases of this nature. The determination of the Board, concurred in by the decision of the Court below, that the employees of petitioners should be placed in a single bargaining unit was arbitrary and unreasonable and unsupported by the evidence. The record indicates beyond question separate ownership of each of petitioners' companies, an independence of their operations, and a marked difference in the functions in each of the two units. The determination that a single unit is appropriate should therefore not be permitted to stand.

Furthermore, the evidence in the record considered as a whole fails to support the Board's findings, concurred in by the Court below, that petitioners interfered with, restrained and coerced their employees in violation of Section 8 (a) (1) of the Act and that petitioners discriminated against employees Henderson, Miller and Hill in violation of Section 8 (a) (3) and (1) of the Act. The decision of the Court of Appeals on these questions is manifestly erroneous and should not be permitted to stand.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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July ...., 1952.